UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

) CIVIL ACTION NO.
IN RE: XCELERA.COM) 00-CV-11649 (RWZ)
SECURITIES LITIGATION)
)
)
THIS DOCUMENT RELATES TO:) ORAL ARGUMENT REQUESTED
ALL ACTIONS)
)

DEFENDANTS' MOTION TO PRECLUDE THE EXPERT OPINION OF SCOTT HAKALA

Pursuant to Fed. R. Evid. 104, 702, and 703, Local Rule 7.1, *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993), and for the reasons set forth in the accompanying Memorandum of Law, Defendants Xcelera Inc., Alexander M. Vik and Gustav M. Vik (collectively, "Defendants") hereby move that this Court preclude Plaintiffs' proffered expert, Scott Hakala, from offering an opinion or testimony in this matter.

As set forth more fully in the accompanying Memorandum of Law, Hakala's testimony and underlying theories are unreliable and should be excluded, both on the basis of *Daubert* and the Federal Rules of Evidence, as well as in light of *Dura Pharms.*, *Inc. v. Broudo*, 544 U.S. 336 (2005).

WHEREFORE, Defendants respectfully request that this Court:

- 1. Issue an order precluding plaintiffs' expert, Scott Hakala, from offering an opinion and testimony in this matter;
- 2. In the alternative, conduct an evidentiary hearing to resolve the issues raised by Defendants' motion; and

3. Grant such further relief as the Court deems proper.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Defendants request a hearing on their Motion to Preclude.

Respectfully submitted,

/s/ Peter J. Macdonald

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CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)

Counsel for Defendants certifies that she has attempted in good faith to resolve or narrow the issues raised herein with Plaintiffs' counsel, but has been unable to do so.

/s/ Robin L. Alperstein

CERTIFICATE OF SERVICE

I, Christopher Carrion, hereby certify that a true and accurate copy of the foregoing Defendants' Motion to Preclude the Expert Opinion of Scott Hakala has been filed and served through the Court's electronic filing system, this 6th day of November, 2007.

/s/ Christopher Carrion